UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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No. 92-3130 September Term, 1993
USDC CR 90-0427-01

United States of America,

v.

Blaine A'mmon White,

BEFORE: Mikva, Chief Judge; Wald, Edwards, Silberman, Buckley, Williams, D.H. Ginsburg, Sentelle, Henderson, and Randolph, Circuit Judges

**O R D E R**

Appellant's Suggestion for Rehearing En Banc has been circulated to the full Court. No member of the Court requested taking a vote thereon. Upon consideration of the foregoing it is

**ORDERED,** by the Court en banc, that the suggestion is denied.

Per Curiam
FOR THE COURT:
RON GARVIN, CLERK
BY:
Robert A. Bonner
Deputy Clerk

# APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

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No. 92-3130 September Term, 1993
USDC CR 90-0427-01

United States of America,

v.

Blaine A'mmon White,

**O R D E R**

Upon consideration of the Appellant's Motion For Stay of Mandate Pending Application for Writ of Certiorari it is

**ORDERED,** that the motion is granted and that the Clerk is directed to withhold issuance of the court's mandate for a period of thirty days from the date of this order.

Per Curiam
FOR THE COURT:
RON GARVIN, CLERK

BY:

Robert A. Bonner
Deputy Clerk

# APPENDIX G

**UNITED STATES COURT OF APPEALS**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Record No. 92-3130

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United States of America

v.

Blaine A'mmon White,

Appellant

---

UNOPPOSED MOTION FOR STAY OF MANDATE PENDING APPLICATION FOR WRIT OF CERTIORARI

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Blaine A'mmon White
*Pro Se*
3204 West Strathmore Avenue
Baltimore, Maryland 21215-3717
(410) 358-6443

October 7, 1993

**UNITED STATES COURT OF APPEALS**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Record No. 92-3130

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United States of America

v.

Blaine A'mmon White,

Appellant

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UNOPPOSED MOTION FOR STAY OF MANDATE PENDING APPLICATION FOR WRIT OF CERTIORARI

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Appellant, Blaine A'mmon White, *pro se*, moves this Court pursuant to Fed. R. App. P. Rule 41 and local Rule 7(g)(2), for a stay of mandate pending application for writ of certiorari and for reasons states:

1. Appellant filed timely petitions with this Court, for rehearing and

rehearing en banc, on September 3, 1993.

2. In separate Orders, both dated October 1, 1993, this Court denied Appellant's aforesaid petitions.

3. Appellant is going to file an application for writ of certiorari to the Supreme Court.

4. Appellant is neither able to afford private counsel, nor does he qualify for an appointment of counsel; thus, Appellant is proceeding *pro se*.

5. Appellant's personal participation in this case is essential for the full protection of his Constitutional rights.

6. Appellant is presently released upon personal bond during the pendency of his appeal all conditions of the said bond have been complied with.

7. Should a mandate issue from this Court, Appellant would be remanded into

custody to begin serving his prison sentence; thereby losing his ability to further pursue his appellate rights.

8. Appellant is seeking a thirty (30) day stay of mandate during which time Appellant will file his application for writ of certiorari.

9. Appellant contacted government counsel John Fisher, Assistant United States Attorney, on October 5, 1993; the government does not oppose the granting of the requested stay.

10. Applicant has two (2) viable issues upon which the Supreme Court could grant the application for writ of certiorari:

A. On July 28, 1993, the Supreme Court decided United States v. Dixon, 61 U.S.L.W. 4835. The aforesaid decision reversed Grady v. Corbin, 495 U.S. 508 (1990).

The case at bar represents the first instance, since Dixon, supra, where the Court will be asked to determine whether a defendant is entitled to a special jury instruction when the government is allowed to introduce evidence of prior criminal conduct for which the said defendant was acquitted, when that same conduct forms the bases for a successive prosecution of that defendant upon a subsequent indictment. Five (5) separate opinions were filed in Dixon, Id., thus the double jeopardy issue is far from settled.

B. The decision of this Court in United States v. White, 936 F.2d 1326 (D.C.Cir. 1991), and in the case at bar, with all due respect, are in direct conflict with Ashe v. Swenson, 431 U.S. 651 (1977), United States v. Brown, 983 F.2d 201 (11th Cir 1993), United States v. Bailin, 977 F.2d 270 (7th Cir. 1992),

United States v. Seley, 957 F.2d 717 (9th Cir. 1992), and Pettaway v. Plummer, 943 F.2d 1041 (9th Cir. 1991).

Specifically, this Court's decision in United States v. White, supra, relies upon the verdict of an acquittal coupled with a hung jury to determine that collateral estoppel does not apply. The aforesaid holding based upon such rationale nullifies the rule of Ashe, supra, and its prodigy.

The Court will be asked to resolve the conflict between the Circuit Courts as to whether the fact of a hung jury may be taken into consideration when an Ashe analysis is undertaken.

Therefore, Appellant's request for stay is not undertaken for purposes of delay.

WHEREFORE, Appellant prays this Court for a stay of the mandate pending application for writ of certiorari.

Respectfully submitted,

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(410) 358-6443

**CERTIFICATE OF SERVICE**

I, the undersigned, this 3rd day of October, 1993, hereby certify that a true and complete copy of aforegoing Unopposed Motion for Stay was mailed, first class, postage pre-paid to John R. Fisher, Assistant United States Attorney, 555 Fourth Street, N.W., Room 4229, Washington, D.C., 20001.

Blaine A'mmon White